

REMARKS

The applicant respectfully requests reconsideration in view of the amendment and the following remarks. Support for the definition of R2 " is (C1-C6)-alkyl substituted by hydroxyl, (C1-C4)-alkoxy or halogen" in the claims can be found on page 3, lines 19-21 of the specification. The applicant corrected an obvious typographical error in the definition of R1 in the claims in which-NCOR6 should read -N $\underline{\text{H}}$ COR6. This is also supported in the structure for example 139 and table 7. The applicant has also corrected the second proviso to make it clear that R2 can be unsubstituted alkyl at any time but it must be unsubstituted alkyl when R¹ is methyl, R³, R⁴, R⁵ and R⁷ are hydrogen and n=0.

Claims 1, 4, 5, 8 and 11 were rejected under 35 USC 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter. Claims 1, 6, 9 and 11 were rejected as being anticipated by Fishwick DE 2130992 ("Fishwick '992"). Claims 1, 6, 9 and 11 were rejected as being anticipated by Boyd et al. (US 4119624) ("Boyd"). Claims 1, 8 and 11 were rejected as being anticipated by Borovas (Chemical Abstracts, 102:26342, 1985) ("Borovas"). Claims 1, 9 and 11 were rejected as being anticipated by Fishwick et al. (US 3097198) ("Fishwick '198"). Claims 1, 4, 9 and 11 were rejected as being unpatentable over Dawson et al. (GB 2104088) ("Dawson"). Claims 1, 4, 5, 9 and 11 were rejected as being obvious under 35 USC 103 (a) over Fishwick '198 or Boyd. The applicant respectfully traverses these rejections.

The applicant appreciates that the Examiner has allowed the subject matter of Claims 2, 3 and 7. For the reasons stated below the applicant believes that all the claims are patentable.

112 Rejection

Claims 1, 4, 5, 8, and 11 are rejected under 35 USC 112 second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter. The applicant corrected an obvious typographical error in the definition of R1 in the claims in which NCOR6 should read -N~~H~~COR6. For the above reasons, this rejection should be withdrawn.

102(b) Rejection Over Fishwick '992

Claims 1, 6, 9 and 11 were rejected as being anticipated by Fishwick '992. Fishwick '992 is cited at page 1, line 10 of the application. Example 3 of Fishwick '992 does not anticipate the claimed invention because R2 is -CH₂CH₂COOCH₂CN which is a substituted ethyl. R² of the applicant's claimed invention is unsubstituted (C₁-C₆)-alkyl, substituted (C₁-C₆)-alkyl, benzyl or phenylethyl and wherein said (C₁-C₆)-alkyl is substituted by hydroxyl, (C₁-C₄)-alkoxy or halogen. Fishwick '992 teaches a substituted alkyl but not substituted by hydroxyl, (C₁-C₄)-alkoxy or halogen. For the above reasons, this rejection should be withdrawn.

It is noted that GB 1,321,902 claims benefit to GB 30181/70 filed June 22, 1970. Fishwick '992 also claims benefit to the same priority application. The undersigned just noticed that at least examples 3-9 are different in each of these applications. The undersigned has not compared the applications to see if there are other differences. In the IDS previously submitted the undersigned indicated that GB 1,321,902 was a related case to Fishwick '992. However, it now appears that there are several differences between

the two applications. The undersigned was not aware of this at the time of filing the IDS.

102(b) Rejection Over Boyd

Claims 1, 6, 9 and 11 were rejected as being anticipated by Boyd. The applicant's require R² is unsubstituted (C₁-C₆)-alkyl, substituted (C₁-C₆)-alkyl, benzyl or phenylethyl and wherein said (C₁-C₆)-alkyl is substituted by hydroxyl, (C₁-C₄)-alkoxy or halogen. Boyd teaches a substituted alkyl but not substituted by hydroxyl, (C₁-C₄)-alkoxy or halogen. For the above reasons, this rejection should be withdrawn.

102(b) Rejection Over Borovas

Claims 1, 8 and 11 were rejected as being anticipated by Borovas. The examiner refers to three compounds. With respect to the first compound Registry Number 94194-65-7, R₂ is an alkyl (ethyl) substituted by CN. The applicant has amended the definition of R₂ so that if R₂ is a substituted alkyl, the alkyl is substituted with hydroxyl, (C₁-C₄)-alkoxy or halogen and not CN. For the above reasons, this rejection should be withdrawn.

With respect to Registry Number 94194-66-8, this compound is not within the claimed invention because of the proviso at the end of Claim 1. If R₁, R₃, R₄, R₅ and R₇ are hydrogen and n=0 (which is the case with this compound), T₁ cannot be nitro if T₂, T₃ and T₄ are hydrogen). However, T₂, T₃ and T₄ are hydrogen and T₁ is nitro in this compound. Therefore, this compound is excluded from the applicant's claimed invention because of the proviso at the end of the claim. For the above reasons, this rejection should be withdrawn.

With respect to registry Number 94194-67-9, this compound is not within the claimed invention because of the proviso at the end of Claim 1. If R₁, R₃, R₄, R₅ and R₇ are hydrogen and n=0 (which is the case with this compound), T₁ is not nitro if T₂ and T₄ are hydrogen and T₃ is chlorine. However, T₂ and T₄ are hydrogen, T₃ is chlorine and T₁ is nitro. Therefore, this compound is excluded from the applicant's claimed invention because of the proviso at the end of the claim. For the above reasons, this rejection should be withdrawn.

102(b) Rejection Over Fishwick '198

Claims 1, 9 and 11 were rejected as being anticipated by Fishwick '198. The Examiner referred to Fishwick '188, examples 41 and 44. Example 41 is not covered by the applicant's because of the proviso at the end of Claim 1 (in the case R¹, R³, R⁴, R⁵ and R⁷ are hydrogen and n=0

D is a group of the formula (IIc), (IIId), (IIe) or (IIa) wherein **T¹ is not nitro**

- if T² and T³ are hydrogen and T⁴ is chlorine or cyano

Example 41 has R₁, R₃, R₄, R₅ and R₇ are hydrogen and n=0

D is a group of the formula (IIc), (IIId), (IIe) or (IIa) wherein **T¹ is nitro**

if T² and T³ are hydrogen and T⁴ is cyano. According to the proviso at the end of claim 1 **T¹ is not nitro.** Therefore, this compound is excluded.

The same applies to compound 44 of Fishwick '198. Furthermore, example 44 is not within the claimed scope because the amended definition of R₂ (substituted alkyl). wherein said (C₁-C₆)-alkyl is substituted by hydroxyl, (C₁-C₄)-alkoxy or halogen. Fishwick '198 example 44 teaches a substituted alkyl but not substituted by hydroxyl, (C₁-C₄)-alkoxy or halogen. For the above reasons, this rejection should be withdrawn.

103(a) Rejections

Claims 1, 4, 9 and 11 were rejected as being unpatentable over Dawson. Claims 1, 4, 5, 9 and 11 were rejected as being obvious under 35 USC 103 (a) over Fishwick '198 or Boyd. In order to expedite prosecution the applicant has enclosed three executed declarations which establishes unexpected superior results compared to the prior art.

See enclosed Declaration for unexpected wash fastness of inventive compound over Example 20 of Dawson.

See enclosed Declaration for unexpected pH stability of inventive Example 11 over Example 41 of Fishwick '198.

See enclosed Declaration of unexpected build up properties of inventive compound over Example 5 of Boyd. For the above reasons, these rejections should be withdrawn.

In view of the above amendment, applicant believes the pending application is in condition for allowance.

A three month extension fee has been paid. Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 03-2775, under Order No. 05579-00354-US from which the undersigned is authorized to draw.

Dated: December 6, 2007

Respectfully submitted,

Electronic signature: /Ashley I. Pezzner/
Ashley I. Pezzner
Registration No.: 35,646
CONNOLLY BOVE LODGE & HUTZ LLP
1007 North Orange Street
P. O. Box 2207
Wilmington, Delaware 19899-2207
(302) 658-9141
(302) 658-5614 (Fax)
Attorney for Applicant

Enclosure: 3 Declarations